IV. Rules for the Institution and Defence of Suits.

A. INSTITUTION OF SUITS ON BEHALF OF GOVERNMENT—*concluded.*

Legal Affairs to Government; but the rest of the papers should be retained by the Remembrancer of Legal Affairs pending the orders of Govenment, unless for any reason he deems it necessary that any of them should be laid before Government.

Papers to be recorded in the Legal Remembrancer's office.

Rule 5.—The report of the officer who proposed the institution of the suit and all other documents accompanying the report of the Remembrancer of Legal Affairs to Government will be returned to him with the order of Government for record in his office.

Preparation of plaint.

Rule 6.—If the institution of the suit be sanctioned, a draft of the plaint will be prepared by the Government Pleader of the district in which the suit is to be instituted, in consultation with the officer who proposed its institution, and will be submitted by him direct to the Remembrancer of Legal Affairs for approval. After the Legal Remembrancer has accorded his approval thereto, the plaint shall be signed, verified and presented by the said Government Pleader.

B. Defence of Suits.

Notices of actions and procedure to be followed in dealing with them.

441. *Rule 7.*—Section 424 of Civil Procedure Code requires that suits against Government or Government officers should be preceded by a notice to be left either with a Secretary to Government, or with the officer concerned. When a notice of this kind is received by a Secretary to Government it will be at once forwarded to the officer principally concerned in, or cognizant of, the matter respecting which an action is threatened.

The officer receiving any such notice, whether from a Secretary to Government, or direct from the complainant, should give it immediate and careful attention. The complainant should be desired, when his complaint is vague in the statement of the alleged infringement of this right, or of the officer whose acts are impugned, to set these points forth succinctly and clearly, as the most effectual means towards obtaining such relief as may properly be given. Should it prove impossible to obtain a lucid and definite statement of the complainant's case in this way he should be examined orally as to all important points, and his answers should be taken down in writing, and verified by his signature, or by a memorandum that the paper was read over to the complainant and assented to by him. The documents above referred to should in every case be carefully preserved, together with any that the complainant may produce in support of his claim or complaint.

Examination of the grounds of complaint.

Rule 8.—The conduct or act complained of may have been either (1) wholly indefensible, (2) justifiable, or (3) of a mixed or doubtful character. In every case the officer receiving the notice should endeavour, without prejudice, to determine to which of these classes it is to be assigned.

IV. Rules for the Institution and Defence of Suits.

B. DEFENCE OF SUITS—*continued.*

If it is indefensible, it is his duty to do what lies in his power to give immediate redress or to obtain it by a full report to the proper authorities.

If the complaint is plainly groundless, or if the threatened action is one which must undoubtedly be defended, if it is brought, no further notice need be taken of the complaint, but the officer concerned should at once proceed, as far as possible, to collect the information and papers which will be afterwards required under Rules 11 and 12.

The chief difficulty arises in the third class of cases; and in these the officer receiving the notice should use every possible effort to distinguish between acts which have been properly done in the discharge of a public duty and those in which, through carelessness, ignorance, or imprudence, some real cause for complaint has been given. Such analysis will, in the majority of cases, reduce these acts under one of the two heads already considered, and they should then be dealt with accordingly. Where there is a doubt as to the real intention of the Government or of a superior authority in any order, the carrying out of which has occasioned the complaint, that doubt should be cleared up by an immediate reference. When there is a doubt as to the legality of the act complained of, though in apparent fulfilment of a rule or order, issued by a superior authority, a clear statement of the case should be submitted for orders to be issued after the opinion of the law officers shall, if necessary, have been obtained.

Pending references in cases falling under either the first or third head, the complainant should be informed that some delay is requisite for the proper disposal of his complaint, and, when instructions have been received, he should be at once informed of what is to be done; but every endeavour should be made to have the matter disposed of within the period of two months from the delivery of the notice allowed by the Civil Procedure Code before the threatened action can be instituted.

Preliminary steps when summons is served on Government Pleader.

Rule 9.—When a suit has been instituted, if it is against Government, and the summons is therefore served on the Government Pleader, he shall *at once* procure an *uncertified* copy of the plaint and forward it and the copy of the summons received by him (with the date of its receipt by him noted on the back) to the officer who himself, or by his subordinates, is alleged to have given rise to the plaintiff's cause of action.

If the plaint relates to the acts of two or more officers, the Government Pleader shall communicate as above with the principal of such officers.

Preliminary steps when summons is served on an officer personally.

Rule 10.—If, owing to the suit being against an officer in his official capacity, the summons is served on that officer personally, he shall *at once* forward a *vakálatnáma* to the Government Pleader (unless the Government Pleader already holds a general power-of-attorney from him), and procure from him an *uncertified* copy of the plaint.

IV. Rules for the Institution and Defence of Suits.

B. DEFENCE OF SUITS—*continued.*

Rule 11.—The officer to whom the Government Pleader refers under Rule 9, and any officer who is sued in his official capacity, and who desires that Government should undertake the defence of the suit, shall collect, with the least practicable delay, all the information regarding the facts of the case which he can procure.

Officer concerned to collect information.

Rule 12.—He is then, within one month from the date of his being first apprized of the institution of the suit, to submit the following papers, through the ordinary channel of communication, to the head of his Department, namely :—

Papers to be submitted to the head of Department.

(*a*) a copy of the plaint in the vernacular ;

(*b*) a translation of the same into English, in half margin, the more important of the statements therein being distinctly marked with letters (*a*), (*b*), and (*c*) and notes being added in the margin stating whether such statements are correct or not, and, if not, in what respect they are inaccurate (when the requisite explanation cannot be thus compressed, reference should be made to the paragraph of the accompanying statement in which the matter should be fully discussed) ;

(*c*) a full and detailed statement (1) of the circumstances which led to the suit, (2) of the course which it is proposed to adopt, namely, whether to admit, compromise, or defend the suit, and of the reasons for the same, and (3) if it is proposed to defend the suit, of the grounds on which it is proposed to base the defence, and of the evidence to be adduced ;

(*d*) if the case turns on documentary evidence, copies of the documents (or the originals) relied on by the plaintiff (if procurable) and by the defence ;

(*e*) all the correspondence and written proceedings, whether in English or in the vernacular, connected with the subject matter of the suit, together with translations of important vernacular papers connected with the subject-matter of the suit, and if files of papers are being sent distinguishing marks should be used so as to indicate the papers to which attention is to be directed.

The forwarding report should state distinctly (1) the number of the suit, (2) the date on which, and the Court in which, it was instituted, (3) the names of all the parties, (4) the amount or value of the claim, (5) the date fixed by the Court for the first hearing, and (6) whether notice of the action has been given under Section 424 of the Civil Procedure Code, and, if so, the date of delivery of such notice.

Rule 13.—If the suit is against an officer in his official capacity he shall instruct the Government Pleader to move the Court from time to time, to grant an extension of the time for hearing the claim, under Section 423 of the Civil Procedure Code, until the orders of Government are received. In the case of suits against Government, the Government Pleader shall make the necessary applications to the Court for time, under Section 420 of the Code, without express

Applications for adjournments pending receipts of orders.

IV. Rules for the Institution and Defence of Suits.

B. DEFENCE OF SUITS—*continued.*

instructions. If in any instance the Court is likely to decline to grant further time, it is the duty of the Government Pleader to inform the officer concerned in the defence of the suit, and, in emergent cases, the Remembrancer of Legal Affairs.

Procedure when two or more officers are jointly concerned in a suit.

Rule 14.—If two or more officers belonging to different departments are sued conjointly, or if the plaint in a suit against Government relates to the acts of two or more such officers, they should, with the least possible delay, communicate one with the other, and after, if possible, mutual consultation with a view to a common line of defence, arrange for the preparation of a joint report. When a joint report is not sent, a separate report should be submitted simultaneously by each officer, care being taken by the officer principally concerned that all the requirements of Rule 12 are complied with.

Applicability of Rules 3, 4 and 5.

Rule 15.—The provisions of Rules 3, 4 and 5 relating to the institution of suits on behalf of Government, shall apply, *mutatis mutandis*, to reports submitted under Rule 12.

Duty of Government Pleader when defence of suit is sanctioned.

Rule 16.—If the defence of a suit against Government is sanctioned, or if Government undertakes the defence of a suit against an officer in his official capacity, the written statement to be filed in answer to the plaint shall be subscribed and verified by the Government Pleader whose duty it is, under sections 420 and 426 of the Civil Procedure Code, to "answer to the plaint," and in the case of a suit of the latter class the Government Resolution sanctioning the defence is to be deemed to be the Government Pleader's "authority to appear and answer to the plaint," and he shall at once on receipt thereof move the Court to cause a note of his authority to be entered in the Register, but shall not produce such Resolution in Court.

Procedure in case of another suit based on same cause of action.

Rule 16 (a).—Sanction to the defence of a suit, the plaint in which is not accepted for want of jurisdiction but returned for presentation to the proper Court having jurisdiction, shall, for the purposes of Rule 16, be held to include sanction to the defence of any suit based on the same cause of action that may be brought in such other Court, unless, in the opinion of the Legal Remembrancer, there are special reasons which render it desirable to obtain further orders from Government in the matter.

In any such case the report under Rule 12 should be confined to forwarding such papers and information as are necessary to enable the Legal Remembrancer to consider whether any modification of his previous opinion, or addition to, or alteration in the grounds on which it was proposed to defend the former suit, is requisite. If the Legal Remembrancer considers there are no special reasons which render it desirable to obtain further orders from Government in the matter, he shall communicate his instructions for the defence of the new suit to the officer submitting the report under Rule 12 and to the Government Pleader, who shall thereupon proceed in accordance with Rule 16.

IV. Rules for the Institution and Defence of Suits.

B. DEFENCE OF SUITS—*concluded.*

Preparation of defence.

Rule 17.—The written statement and the issue sought on behalf of Government are ordinarily to be in strict accordance with the opinion of the Remembrancer of Legal Affairs so far as concurred in by Government; but the Government Pleader is responsible, in communication with the officer concerned in the suit, for the correctness and exhaustiveness of the details of the defence.

C. Conduct of Suits.

Government Pleader's duties whilst a suit is under trial.

442. *Rule 18.*—The responsibility for the conduct of a suit in accordance with the opinion of the Remembrancer of Legal Affairs, so far as concurred in by Government, shall rest with the Government Pleader, unless special counsel is appointed on behalf of Government; and it is the duty of the Government Pleader, during the progress of the suit, to consult the Remembrancer of Legal Affairs on all matters connected with it as to which he experiences any difficulty, or doubt, and especially in respect of any interlocutory order made by the Court, or any application of the opposite party which seems to require particular instructions.

If special counsel is appointed, it is the duty of the Government Pleader, subject to the orders of the Remembrancer of Legal Affairs, to instruct him, and, when necessary, to prepare his brief, and generally to aid him in the conduct of the case.

Collector or other officer to furnish information and prepare evidence.

Rule 19.—In cases connected with the departments under the control of the Collector and Magistrate of the District, it is his duty, or that of any subordinate whom he may specially depute for the purpose, and in cases connected with any other department it is the duty of the officer who proposed the institution, or who sought the sanction of Government for the defence of the suit (as the case may be), to ascertain that the Government Pleader, or special counsel, is thoroughly acquainted with the facts of the case, and with the evidence to be adduced in support of the claim, and to see that the necessary evidence, whether oral or documentary, is ready by the proper time. The Government Pleader must keep the Collector, or other officer, informed on all points on which his co-operation is necessary, and report, with the least possible delay, if any further evidence or information is required, moving the Court, if necessary, from time to time to postpone the case, or adjourn the hearing.

An officer to be present at the trial to aid the Government Pleader.

Rule 20.—When a suit is under trial, some intelligent officer thoroughly conversant with the facts of the case should be deputed to be present to instruct the Government Pleader as to the truth concerning matters which arise unexpectedly, and to direct his attention to the documents, or other evidence, that may become important at each stage of the trial. In important cases, and in